Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90

REPLY COMMENTS OF CALIFORNIA INTERNET, L.P. DBA GEOLINKS

California Internet, L.P. DBA GeoLinks ("GeoLinks" or the "Company") submits these Reply Comments in response to Comments submitted on the Notice of Proposed Rulemaking ("NPRM") issued August 2, 2019 in the aforementioned proceedings.[1]

INTRODUCTION

GeoLinks commends the Commission on its efforts to deploy high speed broadband to the remaining unserved areas of the country. As a Connect America Fund Phase II ("CAF") auction award winner, GeoLinks recognizes how the proposed Rural Digital Opportunity Fund ("RDOF") Auction rules will impact small to medium sized service providers. GeoLinks supports the creation of the RDOF and largely supports all of the Commission's proposals with respect to its implementation thereof. However, GeoLinks provides input on some of the Commission's proposals that could result in diminished participation in the RDOF auction or inefficient use of Universal Service Fund ("USF") support.

[1] Rural Digital Opportunity Fund, Notice of Proposed Rulemaking, WC Docket No. 19-126, FCC 19-77 (rel. Aug. 2, 2019) ("NPRM").

DISCUSSION

A. The RDOF Auction Must Remain Technology Neutral

The RDOF Auction process, as proposed in the NPRM, is built off of the Commission's success in the CAF auction that concluded last year. As such, the NPRM proposes a number of processes designed to obtain similar successful results to more areas with a larger and more robust fund. While this effort should be applauded throughout the telecommunication industry, unfortunately some commenters have decided to use the NPRM as an opportunity to attempt to sway the Commission away from running the RDOF auction in a technology neutral manner.

For example, NRECA boldly asserts that "the FCC should not grant applications in which the applicant is proposing to utilize new, unproven technologies or proposing data rates beyond generally accepted standards for the technology."[2] NRECA goes on to say that "winning bids should only go to proven technologies that have been extensively deployed and field-proven to deliver quality services meeting all EDOF requirements."[3] Notably, NRECA fails to state specifically what technologies it refers to, what these perceived "generally accepted standards" are, or what "extensively deployed" or "field-proven" mean. These statements are made simply to plant a seed of doubt into trusting any technology that is seen as an alternative to traditional fiber technology. Similarly, the North Dakota Joint Commenters ("NDJC") assert that RDOF should only support "future-proof fiber."[4] Moreover, Windstream urges the Commission to limit support to small providers "with limited existing infrastructure."[5]

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[2] Comments of National Rural Electric Cooperative Association, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("NRECA Comments") at 8.

[3] *Id.*

[4] Comments of the North Dakota Joint Commenters, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) at 2.

[5] Comments of Windstream Services, LLC, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("Windstream Comments") at 20.

These commenters, and others, seek to limit RDOF opportunities for diverse technology types and turn the Commission's favor to "traditional" technology types with "traditional" deployment processes. What these commenters fail to address, however, is that these "traditional" efforts have not been successful to ensure broadband deployment to unserved parts of the US, which is why the RDOF is being proposed in the first place. GeoLinks urges the Commission to retain the technology neutral approach it sets forth in the NPRM and rely on its proposed financial and technological requirements to vet which service providers and which technologies are eligible for RDOF support.

B. The Commission Should Not Implement Subscribership Milestones as a Basis for RDOF Funding

GeoLinks asserts that the Commission should refrain from making funding contingent upon RDOF recipients attaining set subscribership milestones. From a statutory perspective, RDOF funds should only be used for broadband deployment. GeoLinks agrees with WISPA that Section 254 of the Communications Act limits the use of RDOF support for "the provision, maintenance, and upgrading of facilities and services for which the support is intended."[6] Specifically, WISPA asserts that "the [USF] was established to subsidize *availability* of telecommunications services in high-cost areas," not adoption.[7] Therefore, based on the language of Section 254, a subscription requirement should not be a requirement for RDOF funding.

From a policy perspective, several Commenters agree that imposing subscribership milestones will not serve the goals of the program.[8] As an initial matter, lack of subscribership

[6] Comments of the Wireless Internet Service Providers Association, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("WISPA Comments") at 21-22, citing 47 U.S.C. §254(d).

[7] *Id.* at 21 (emphasis added).

[8] Notably these commenters represent varying company sizes, interests, and technology types.

in an area is not necessarily attributable to the efforts, or lack thereof, of a service provider. As CenturyLink explains, providers "have every incentive to sell their service to customers in program areas where they have deployed the network facilities required to provide the requisite broadband service in high-cost areas."[9] However, as the California Emerging Technology Fund astutely notes, "borrowing a line from the movie 'Field of Dreams,' just because you build it, does not mean that subscribers will come."[10] Similarly, WTA uses the adage "you can lead a horse to water, but you can't make it drink" to show that "no matter what a [service provider] may do to deploy, operate and advertise their broadband services," they may not have control over broadband adoption in RDOF areas.[11] As GeoLinks points out in its opening comments, low take rates may occur due to a number of factors including consumers in RDOF areas not understanding the benefits of highspeed broadband connections or potential competition either from new entrants after deployment or from existing service providers offering slow speed options (i.e. sub 25/3 Mbps, which customers may opt to keep though faster speeds will be available). Any of these factors can affect take rate.

In addition, imposition of a minimum subscribership requirement will only serve to discourage participation in the RDOF auction. As WISPA explains, "if the Commission requires RDOF recipients to meet subscribership benchmarks, participation in the auction may be significantly depressed."[12] Similarly, NCTA notes that such a requirement "would add a level of

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[9] Comments of CenturyLink, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("CenturyLink Comments") at 18.

[10] Comments of California Emerging Technology Fund, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) at 14.

[11] Comments of WTA-Advocates for Rural Broadband, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) at 21.

[12] WISPA Comments at 8.

uncertainty into the funding mechanism, including how much support would be needed to spur adoption in an area, and could potentially deter bidders."[13]

For these reasons, GeoLinks urges the Commission not to adopt a mandatory subscription rate as part of the RDOF auction process. Instead, the Commission can encourage broadband providers to take steps to secure higher subscription rates by implementing its proposed requirements that recipients deploy networks capable of supporting a 70% subscription rate and advertise the availability of their services in RDOF areas.

C. In Order to Encourage More Rapid Deployment and Efficient Use of RDOF Funds, the Commission Should Not Impose the Letter of Credit Requirement

Several Commenters share GeoLinks' concerns regarding the letter of credit ("LOC") requirement proposed in the NPRM. As GeoLinks noted in its opening comments, LOCs can carry significant burdens for service providers – especially small and medium sized service providers. GeoLinks asserts that the proposed LOC structure will do nothing to promote the Commission's goal of encouraging rapid deployment of broadband networks. Instead, the Commission should consider alternative options to protect disbursed funds.

In the NPRM, the Commission considers options that will encourage faster build out from RDOF recipients.[14] GeoLinks asserts that one way to encourage faster buildout is to refrain from requiring RDOF recipients to obtain LOCs. As GeoLinks explains in its opening comments, one of the burdens that LOCs impose on service providers is the potential to hinder the ability to secure additional types of funding to procure equipment and other network essentials early in the buildout process. This view is shared by Windstream, which explains that

[13] Comments of NCTA – The Internet & Television Association, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) at 8.

[14] *See* NPRM at 28 seeking comment on whether the Commission should require support participants to build out to 50% of the requisite number of locations in a state by the end of year three.

LOCs affect "a provider's ability to finance its deployment obligations" by making the provider "a less attractive borrower, because the lender knows that the provider has a substantial (albeit contingent) outstanding financial obligation."[15] Without the ability to finance equipment upfront, service providers may have no choice but to stretch out their buildout timeline – making purchases on a rolling basis as funding comes in. This does nothing to encourage (or allow) providers to speed up deployment efforts.

In addition, as GeoLinks and other explain, LOCs are expensive. The costs associated with obtaining and maintaining an LOC often run service providers 3-5% of the total value of the LOC (if not more). As CenturyLink illustrates, for example, these costs can be astronomical over the life of the LOC requirement.[16] While the Commission has previously acknowledged that LOC's carry costs, the assumption appears to be that service providers will simply bake those costs into their bids – in other words, that USF funds should be used for those costs.[17] The flaw in this assumption, however, is that any USF funds used for bank fees, etc. are no longer available for actually deploying broadband.

As the Joint Commenters explain, "it is the Commission's responsibility to ensure that limited universal service funding is being used in [an] efficient and cost-effective manner.[18] Moreover, as Incompas notes, "as the Commission recognizes in the NPRM, letters of credit can

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[15] Windstream Comments at 18.

[16] *See* CenturyLink Comments at 13. The chart CenturyLink includes in its comments assumes a 2.5% LOC fee. These numbers will be higher, relatively, for smaller companies who likely have secured LOCs at a higher rate.

[17] *Connect America Fund, et al*., Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58 and 14-259, 31 FCC Rcd 5949 (2016) ("CAF Phase II Auction Order") at para. 139 - "While we understand that the requirement will impose costs on participants, we expect that all entities will factor the cost of letters of credit into their bids."

[18] Comments of the Pennsylvania Public Utility Commission (Pa. PUC), the Pennsylvania Office of Consumer Advocate and the Pennsylvania Office of Small Business Advocates ("Joint Commenters"), WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) at 5.

be costly, and bidders must take that into account in their auction participation. That is money that would be better invested in the network itself."[19] Similarly, in advocating for the use of a performance bond over an LOC (discussed more below), WISPA suggests that a less fee-intensive option "could re-direct tens of millions of dollars from letters of credit fees to deployment."[20] Being able to use all obtained USF funds for USF deployment purposes rather than for bank fees, etc. will mean the ability for service providers to utilize USF funding more rapidly upon receiving it (vs. holding on to it to ensure all bank-related fees are paid before utilizing it for equipment, deployment, adding additional personnel, etc.).

For these reasons, the Commission should consider alternatives to the LOC in order to reach its goal to encourage faster buildout of broadband networks in RDOF areas. There are a number of alternatives proposed by commenters. GeoLinks supports several of them. As an initial matter, GeoLinks supports the proposal by Incompas that "the Commission should allow small providers to demonstrate capability through means other than letters of credit," such as "participation in other build projects, such as E-Rate of another federal or state grant project."[21] GeoLinks supports the idea that participation in another project could serve as assurance to the Commission that RDOF funds will be utilized in an effective manner. Specifically, GeoLinks suggests that the Commission refrain from requiring LOCs from CAF recipients that are meeting their performance milestones.

However, if the Commission believes some mechanism must be used for all RDOF recipients regardless of past performance, GeoLinks supports the use of a performance bond in lieu of an LOC. As WISPA explains in its opening comments, "if rules are appropriately crafted,

[19] Comments of Incompas, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("Incompas Comments") at 13.

[20] WISPA Comments at 36.

[21] Incompas Comments at 13.

performance bonds can accomplish the same objectives as letters of credit, with the added benefit of giving RDOF recipients flexibility to rely on a less expensive or otherwise better financial instrument."[22] Specifically, WISPA cites The Surety & Fidelity Association of America and the National Association of Surety Bond Producers which explain that a performance bond "is the result of the surety's review of the financial strengths and capabilities of the carrier in determining whether to provide the bond."[23] This group explains that a performance bond "serves as a 'deep pocket' in the event the carrier fails" while an LOC "simply does not provide the same financial guarantee to the government."[24] For these reasons, and those set forth in its opening comments, GeoLinks urges the Commission to adopt a performance bond requirement over an LOC requirement.

In addition to a performance bond requirement, GeoLinks would also support alternative options for RDOF recipients (that recipients could chose between depending on their specific financial needs/ realities). One such option would be for a service provider to place a set amount into escrow, as suggested by Windstream.[25] This would serve as an upfront payment similar to spectrum license auctions. As Windstream explains, "the provider would be permitted to take the funds out of escrow as soon as it certifies that it has met its first deployment milestone" and "should the provider withdraw before funding is disbursed or if it should fail to meet its first milestone on year after the deadline…the provider [would] be referred to the Enforcement Bureau."[26] GeoLinks agrees that "this requirement would ensure that providers have 'skin in the

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[22] WISPA Comments at 35.

[23] *Id.* at 36

[24] *Id.*

[25] Windstream Comments at 19.

[26] *Id.*

game' before they place their bids, not after."[27] Another option would be the reduced LOC option that GeoLinks proposed in its opening comments. Specifically, GeoLinks suggested that the Commission reduce the LOC amount required for each year based on whether certain performance metrics have been met by an RDOF recipient. This concept is also supported by WISPA, which proposed that as an alternative to the performance bond requirement, the value of a letter of credit should "be reduced by the same percentage as the service milestone that the RDOC recipient has satisfied."[28]

GeoLinks supports elimination of the LOC requirement for all RDOF recipients as proposed in the NPRM. Specifically, GeoLinks urges the Commission to either eliminate the requirement for service providers that have previously been awarded CAF funding or, if some mechanism must be used, to adopt a performance bond requirement with the option to obtain a reduced LOC, depending on the preference of the service provider. GeoLinks believes that these alternatives will help the Commission protect its financial interests while meeting its goals of encouraging rapid deployment of RDOF services and ensuring USF funds are used in the most efficient manner possible.

CONCLUSION

GeoLinks commends the Commission on its efforts to deploy high speed broadband to the remaining unserved areas of the country. While GeoLinks largely supports all of the Commission's proposals regarding the RDOF, the Company urges the Commission to encourage faster buildout and avoid discouraging participation in the RDOF auction by ensuring RDOF

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[27] *Id.* at 20.

[28] WISPA Comments at 40.

remain technology neutral, refraining from imposing a subscribership threshold upon which funding is contingent, and consider alternatives to the LEC requirement.

Respectfully submitted,

California Internet, L.P. DBA GeoLinks

/s/ Skyler Ditchfield, Chief Executive Officer

/s/ Melissa Slawson, General Counsel/ V.P of Government Affairs and Education

October 21, 2019